August 26, 2021

Ms. Vanessa Countryman
Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Request for Exemptive Order Pursuant to Rule 15c2-11(g)

The Securities Industry and Financial Markets Association ("SIFMA") and the Bond Dealers of America ("BDA") and their members appreciate this opportunity to engage with the U.S. Securities and Exchange Commission ("Commission") and its staff on this important development in the over-the-counter ("OTC") securities markets.[1]

I. Introduction

On September 16, 2020, the Commission adopted a final rule amending Rule 15c2-11 under the Securities Exchange Act of 1934 ("Exchange Act"),[2] which addresses disclosures in the OTC markets and imposes requirements upon broker-dealers who publish quotations in such markets.[3] Rule 15c2-11, as amended, will require a broker-dealer or a qualified interdealer quotation system to collect, record, and review for timeliness, accuracy, reliability, and public availability certain information related to securities before publishing a quotation, or submitting a quotation for publication, in any quotation medium for an OTC security, unless an exception

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[1] **SIFMA** is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). **Bond Dealers of America** is the only DC-based organization exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.
[2] 17 C.F.R. § 240.15c2-11.
[3] Publication or Submission of Quotations Without Specified Information, 85 Fed. Reg. 68124 (Oct. 27, 2020) ("Adopting Release").

applies. The rule, on its face, does not distinguish between types of securities, other than municipal securities, which Rule 15c2-11 expressly excepts.[4] The amendments became effective on December 20, 2020, with a compliance date of September 26, 2021.[5]

For the reasons discussed below, we seek an order pursuant to Rule 15c2-11(g) to exempt the publication of quotations for all fixed income securities from Rule 15c2-11.[6] If, however, the Commission is unwilling to issue an order exempting all fixed income securities from Rule 15c2-11, we request that the Commission issue an order exempting the following from Rule 15c2-11: (1) the publication of quotations for government securities as defined in Section 3(a)(42) of the Exchange Act; (2) the publication of quotations for fixed income securities which are addressed by the disclosure regime of the federal securities laws; (3) the publication of quotations to institutional investors and broker-dealers; and (4) the publication of quotations for securities issued by banks, including brokered certificates of deposit ("CDs") that are securities. We have had several conversations with the staff of the Commission's Division of Trading and Markets related to this exemption request, which have been helpful to us in considering how to structure this request.

Included within the category of fixed income securities addressed by the disclosure regime of the federal securities laws are: (1) fixed income securities of an issuer that is a reporting company under the federal securities laws;[7] (2) fixed income securities registered for sale under Section 5 of the Securities Act of 1933 ("Securities Act"); (3) fixed income securities of an issuer offered and sold pursuant to Rule 144A under the Securities Act; (4) fixed income securities of an issuer offered and sold pursuant to Regulation D under the Securities Act; (5) fixed income securities of an issuer that has issued any other security that is listed on a national securities exchange; and (6) securities sold offshore pursuant to Regulation S. Mortgage- and asset-backed securities (collectively, "ABS") have their own disclosure requirements and may be offered and sold either as registered offerings or under various exemptions from registration.

Further, to the extent the Commission does not issue an order exempting all fixed income securities from Rule 15c2-11, we respectfully request, as soon as practicable, an extension of

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[4] 17 C.F.R. § 240.15c2-11(f)(4). In addition, exempted securities, as defined in Section 3(a)(12) of the Exchange Act, appear to be excluded from Rule 15c2-11 because exempted securities are excluded from Section 15(c)(2)(A) of the Exchange Act. While government securities are exempted securities, as defined in Section 3(a)(12)(A)(i) of the Exchange Act, government securities are included in Section 15(c)(2)(C) of the Exchange Act. *See* Section II.C. below.

[5] Adopting Release at 68172. The compliance date is nine months after the effective date of the amended rule, except for the compliance date for paragraph (b)(5)(i)(M) of the amended rule, which is two years after the effective date of the amended rule. Paragraph (b)(5)(i)(M) requires a broker-dealer or a qualified interdealer quotation system, before publishing a quotation in a quotation medium, if relying on the "catch-all" provision, to collect and place in its records, review for timeliness and public availability, accuracy, and reliability, "similar financial information for such part of the two preceding fiscal years as the issuer or its predecessors have been in existence."

[6] 17 C.F.R. § 240.15c2-11(g) ("Exemptive authority. Upon written application or upon its own motion, the Commission may, conditionally or unconditionally, exempt by order any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.").

[7] Included within this request are fixed income securities issued in reliance on Rule 12g3-2(b).

time to comply with the rule for any fixed income security not covered by an exemptive order, as the infrastructure necessary to comply with the amendments in the fixed income markets does not exist and will require time to implement. In particular, considering the vast number of fixed income securities, the very limited application of many of the rule's current exceptions to fixed income securities, and the lack of any automated way to comply with the recent amendments, the application of the rule to any fixed income securities will be highly disruptive. We, therefore, request an extension of time to permit dealers to establish an automated infrastructure for compliance with the requirements of the amended rule. For the reasons discussed below, the requested exemptions are necessary and appropriate in the public interest and are consistent with the protection of investors.

The fixed income market, unlike the equity market, is almost exclusively an OTC market, so the rule, as written, purports to apply to the publication of quotations in a quotation medium for virtually all fixed income securities, other than municipal securities.[8] "Quotation" and "quotation medium" are each defined broadly in the rule.[9] These broadly defined terms potentially capture a significant amount of quotation activity in the fixed income markets. The act of publishing or submitting quotations for publication is the trigger for the application of the rule, but the word "publish" is not a defined term. We are concerned that the rule, as written, could apply broadly to quotation activity for fixed income securities, and that the application of the rule to quotations for fixed income securities will deter that quotation activity in a way that will have a significant, deleterious effect on the fixed income markets. We believe that such an application of the rule is overbroad and unnecessary and will increase costs, decrease liquidity, and reverse the gains in transparency that the fixed income markets have achieved in recent years as the market has become more electronic.

As we describe below, we anticipate that applying Rule 15c2-11 to the fixed income markets will be detrimental to investors. The rule's history demonstrates that fixed income securities should be broadly exempted from the rule. Fixed income investors have access to current information about issuers. The fixed income markets are different from the equity markets due to the variety of types of securities, the large number of fixed income securities, the lack of exchange trading, and the infrequency of trading of particular fixed income securities, among other things. Moreover, the current regulatory regime is sufficient to protect fixed income investors, and it is not necessary to add Rule 15c2-11 on top of that existing regime. There is no demonstrated problem in the fixed income markets that this rule would solve to justify the significant costs that would result from its application to the fixed income markets.

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[8] Exempted securities other than government securities, commercial paper, bankers' acceptances and commercial bills also appear to be outside the scope of Rule 15c2-11, as they are excluded by Section 15(c)(2)(A) of the Exchange Act. Government securities, although exempted securities, as defined in Section 3(a)(12) of the Exchange Act, are covered by Section 15(c)(2)(C) of the Exchange Act. *See* Section III.A. below.

[9] Quotation includes price bids or offers for a security, indications of interest for a security, and indication of wishes to advertise a general interest in a particular security; quotation medium includes an interdealer quotation system (itself a defined term), or any publication or electronic communication network or other device used by broker-dealers to make known to others there interest in transaction in a security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy and sell. 17 C.F.R. § 15c2-11(e)(7)-(8).

Accordingly, an exemption for fixed income securities from the application of Rule 15c2-11 is necessary and appropriate in the public interest and is consistent with the protection of investors.

II. Background

A. The Application of Rule 15c2-11 to the Publication of Quotations for Fixed Income Securities Will Be Detrimental to Investors and Is Not in the Public Interest

The application of Rule 15c2-11 to the publication of quotations for fixed income securities will increase the costs and hence deter quotations for those securities. In some cases, publication of quotations may not be possible. The cost of publishing such quotations will be high because of the vast number of fixed income securities, the fact that these securities trade almost exclusively OTC, the significant costs associated with complying with the rule's requirements before publishing a quotation, and the lack of any meaningful exceptions from the rule relevant to fixed income securities (*e.g.*, the average daily trading volume ("ADTV") and piggyback exceptions will be extremely limited because most fixed income securities are infrequently traded and accurate volume data is not available, and the exchange listing exception will be largely unavailable because very few fixed income securities are listed and traded on an exchange). Accordingly, the rule will apply to the publication of quotations for virtually all non-municipal fixed income securities without discrimination, regardless of the nature of the issuer, the amount of available information, or the liquidity of the security.[10]

Recently, the fixed income markets have been evolving to be more electronic. This electronification has led to greater transparency, improved price discovery, and increased efficiency in these markets – a positive development for fixed income markets. The application of Rule 15c2-11 to the publication of quotations in the fixed income markets will create serious headwinds for electronic trading of fixed income securities, and quotations will move to methods where the requirements of Rule 15c2-11 do not apply, *e.g.*, the telephone.[11] A retreat to less transparent and less liquid fixed income markets will increase investors' costs, as dealers will be reluctant to provide liquidity due to the difficulty of reoffering bonds, or will provide liquidity at worse prices due to the increased risk and costs. In addition, retail customers may lose access to quotations for fixed income securities they seek to sell, especially on self-directed platforms.

Further, it is clear that the rule is tailored to the OTC equity markets, where the fraud and manipulation at which the rule is targeted have historically occurred; there is no history of this type of fraud or manipulation in the fixed income markets.

B. The Relevant History of the Rule Demonstrates It Was Aimed to Protect Retail Investors in the OTC Equity Markets

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[10] *See supra*, n. 8.

[11] It is estimated that from 2010 to 2021 (year to date), the volume of investment grade corporate bonds traded electronically has increased from 7% to 39%, and the volume of high yield bond traded electronically from 1% to 25%. From 2017 to 2021 (year to date), the volume of U.S. Treasuries traded electronically has increased from 34% to 60%.

Rule 15c2-11 was initially adopted in 1971 and was last substantively amended in 1991, prior to the December 2020 amendments.[12] As the Commission stated in connection with the current amendments, "the amendments are narrowly tailored to further the Commission's ongoing effort to protect retail investors from fraud and manipulation in the OTC market, maintain the integrity of the OTC market, promote a more efficient and effective OTC market, and facilitate capital formation for issuers that make their information current and publicly available."[13] Further, the recent amendments are based on the premise that "[s]ecurities that trade in the OTC market are primarily owned by retail investors."[14] In fact, the Adopting Release for the amendment mentions "retail investors" 45 times. These concerns, while clearly relevant to the OTC equity markets, have much less salience in the fixed income markets, which are dominated by institutional investors, not retail investors, and which do not have a history of fraud and manipulation aimed at retail investors that is at issue in the OTC equity markets. In fact, we have not identified any domestic securities enforcement action against a broker-dealer that involved fraud and manipulation in fixed income markets that would be related to the information requirements of Rule 15c2-11. While the recent Rule 15c2-11 amendments have been narrowly tailored to the OTC equity markets, they (and the rule itself) are not tailored to the fixed income markets.

Further, in 1999, the Commission proposed to expressly exclude certain fixed income securities from Rule 15c2-11. While that proposed rule was not adopted, the Commission made certain observations still relevant today. At the time, the Commission stated that "[w]e agree that applying the Rule to…. certain fixed income debt securities is not directly related to microcap fraud concerns."[15] "The fraud and manipulation that we have observed in the microcap securities have not been evident in the fixed income market."[16] Excluded by the Reproposing Release were "exempted securities, non-convertible debt securities, non-participatory preferred stock, and investment grade rated asset backed securities."[17] The rationale for excluding fixed income securities from the rule in 1999 is even more valid today.

The Commission, however, did not address the proposed 1999 exclusions in the most recent rulemaking. With respect to fixed income securities, the sole mention in the proposing release for the recent amendments was question 87 (of 128 questions), which asked if the "publications or submissions of quotations for other securities (*e.g.*, debt securities, non-participatory preferred stock, or investment grade asset-backed securities)…. should also be excepted from the Rule's provisions."[18] We understand that the Commission did not receive any comments in response to this question. This is the only place the word "debt" appears in the proposal, and the issue is not analyzed. Because this rule has never been applied to fixed income, bond market professionals were not aware of the request for comment on the application of the rule to markets, other than equity markets. Further, the Commission included the question

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[12] Adopting Release at 68125.
[13] *Id.* at 68128
[14] *Id.* at 68125.
[15] Reproposing Release at 11128.
[16] *Id.* at 11130.
[17] *Id.* at 11144. The Commission withdrew the proposal on November 1, 2013.
[18] Publication or Submission of Quotations Without Specified Information, 84 Fed. Reg. 58206, 58230 (Oct. 30, 2019).

in a discussion of the underwritten offering exception, which would not necessarily be noticed by the fixed income professionals or dealers that do not engage in underwriting. Further, in the Adopting Release, the Commission did not address the applicability of the rule to fixed income securities, did not conduct any cost-benefit analysis of the question, and relied on data solely relating to OTC equity markets. [19] The Commission, to our knowledge, has not evaluated the costs or benefits that might result from applying Rule 15c2-11 to the fixed income markets. We anticipate that applying the rule to fixed income securities would result in a significant decrease in the publication of quotations for a wide range of such securities. Applying Rule 15c2-11 to the fixed income market without sufficient analysis is neither in the public interest nor consistent with the protection of investors.

C. Fixed Income Investors Have Access to Current Information About Fixed Income Securities

Fixed income investors have access to current information about fixed income securities. Many fixed income issuers conduct offerings that are registered pursuant to Section 5 of the Securities Act and are reporting companies that file current and periodic reports pursuant to the Exchange Act.[20] These reports are publicly available. In addition, certain fixed income issuers also issue equity securities that are listed and traded on national securities exchanges, about which there is substantial public information available by virtue of such listing. Foreign private issuers relying on Rule 12g3-2(b) are also subject to public information availability requirements.[21] These issuers are required to publish information in English on their websites or through a publicly available information delivery system, including information made public pursuant to the laws of the country in which they operate, information they have filed with and has been made public by an exchange, and information which they are required to distribute to their security holders.[22]

Further, non-reporting issuers may sell fixed income securities that are subject to Rule 144A.[23] If the issuer of fixed income securities subject to Rule 144A is not a reporting company under the Exchange Act, security holders and prospective purchasers have the right to obtain certain information from the issuer or the seller prior to the sale.[24] Rule 144A is available for sales only to qualified institutional buyers, which are generally institutions with more than $100 million in assets or assets under management, dealers with at least $10 million in securities, or

[19] *See, e.g.*, Adopting Release at 68185, n. 640 (Describing how the Commission based its economic analysis of information from OTC Markets Group related to the U.S. OTC equity market and stating that the "Commission believes that OTC Markets Group data are reasonably representative of all OTC quoting and trading activity in the U.S." When reading the Adopting Release, it is clear that the Commission considered the "OTC quoting and trading activity" represented by such data to be the relevant subset of overall market activity to which Rule 15c2-11 applies. Notably, this data does not address fixed income securities.).
[20] Foreign governments that offer debt securities under Schedule B are not subject to ongoing reporting requirements.
[21] 17 C.F.R. § 240.12g3-2(b).
[22] 17 C.F.R. § 240.12g3-2(b)(1)(iii).
[23] 17 C.F.R. § 144A.
[24] Foreign governments, eligible to use Schedule B, and issuers exempt from reporting pursuant to Rule 12g3-2(b) are not subject to this ongoing information provision of Rule 144A, but issuers relying on Rule 12g3-2(b) are subject to other requirements to make information publicly available. *See supra*, n. 22 and accompanying text.

dealers acting on a riskless principal basis.[25] Fixed income securities sold under Rule 144A are not sold to the retail investors the rule is aimed at protecting. While this information may not be publicly available if the issuer is not a reporting company, the information is available to any investor qualified to purchase the fixed income securities. *See* Attachment A for the typical language in a Rule 144A reporting covenant.

Securities that are sold to qualified institutional buyers in the United States may also be offered and sold to offshore investors pursuant to Regulation S. The Commission has not required registration under Section 5 of the Securities Act of securities offered and sold offshore pursuant to Regulation S. When the Commission initially adopted Regulation S, it stated:

> The Regulation adopted today is based on a territorial approach to Section 5 of the Securities Act. The registration of securities is intended to protect the U.S. capital markets and investors purchasing in the U.S. market, whether U.S. or foreign nationals. Principles of comity and the reasonable expectations of participants in the global markets justify reliance on laws applicable in jurisdictions outside the United States to define requirements for transactions effected offshore. The territorial approach recognizes the primacy of the laws in which a market is located. As investors choose their markets, they choose the laws and regulations applicable in such markets.[26]

These policy considerations would apply, with equal force, to publication of quotations for fixed income securities offered for sale under Regulation S.

Further, fixed income securities offered and sold pursuant to Regulation D are subject to information requirements. Regulation D specifies general conditions to be met in order to rely upon its safe harbor from Section 5 of the Securities Act, including when information must be furnished.[27] Securities sold pursuant to Regulation D would generally be considered restricted securities.[28] Resales of restricted securities is permitted only with registration or pursuant to an exemption from registration, for example, pursuant to Rule 144 or the so-called 4(a)(1 ½) exemption. Private resales of restricted securities would be subject to the standards set forth in *SEC v. Ralston Purina Co*., 346 U.S. 119 (1953), which include that offerees and purchasers have access to the type of information necessary to make an informed investment decision.

ABS should be exempt from Rule 15c2-11 because: (a) the informational needs of ABS investors are met through both the existing disclosure framework described above and the additional informational reporting specific to ABS, (b) the informational requirements of the rule are not particularly relevant for ABS investors, and (c) ABS is not subject to the type of market manipulation concerns expressed by the Commission. ABS transactions can be offered on a public or private basis, or simultaneously with tranches in each category (where the privately offered bonds can be offered under Rule 144A, Regulation D and/or Regulation S). ABS-

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[25] 17 C.F.R. § 144A(d)(4)(i).
[26] Offshore Offers and Sales, Release No. 33-6863 (Apr. 24. 1990).
[27] 17 C.F.R. § 502(b).
[28] *See* 17 C.F.R. § 502(d); 17 C.F.R. § 144(a)(3)(ii) ("the term restricted securities means…[s]ecurities acquired from the issuer that are subject to the resale limitations of § 502(d) under Regulation D….").

specific information is provided to investors through both regulatory filings (such as Form 10-D or pursuant to Rule 15Ga-1) and through a third party, typically a trustee, with a duty to the ABS investors that is contractually required to provide periodic information, usually on a monthly basis, about the asset pool to investors. ABS performance is dependent upon the performance of the asset pool, rather than the performance of a corporate issuer. Consequently, information about the asset pool is material to investors; however, because the issuer of ABS is typically a pass-through trust or limited special purpose entity, the focus on issuer information under the rule is not suitable for ABS. Because ABS is typically priced relative to industry benchmarks and in comparison to other ABS with similar ratings, assets, and maturities, it would be extremely difficult to manipulate the price of an ABS without also manipulating the prices of all other similar ABS, and in the case of ABS with multiple tranches, the prices of the other tranches in the transaction. Moreover, the ABS market is primarily comprised of institutional investors, who have the means to independently assess a specific issuance as well as the relative market for similar ABS.[29]

These existing disclosure regimes are heavily relied upon by issuers and fixed income investors, and there is no indication that the additional requirements of the rule are necessary in this context. Given these various disclosure regimes and related policy considerations, it is consistent with the protection of investors to exempt fixed income securities from Rule 15c2-11.

D. The Fixed Income Markets Are Different From the Equity Markets; We Anticipate Significant Costs From the Application of Rule 15c2-11 With No Benefit

1. The Large Variety of Fixed Income Products Complicates Application of the Rule

The fixed income markets are quite varied, with many different types of instruments and many different types of issuers. The fixed income markets include government securities, a broad category that includes securities issued by the U.S. Treasury, by agencies whose obligations are guaranteed by the full faith and credit of the United States and by government sponsored enterprises ("GSEs") (including mortgage-backed securities issued or guaranteed by GSEs). The fixed income market also includes ABS that are privately issued, typically by trusts or some other form of special purpose vehicle, securities issued by foreign sovereigns, and securities issued by corporations. Fixed income issuers include companies that are subject to the mandatory reporting regimes of the federal securities laws, including Sections 13 or 15(d) of the Exchange Act, and issuers that are not so subject; and fixed income securities include securities offered and sold privately in transactions exempt from Section 5 of the Securities Act and securities that are offered and sold publicly pursuant to registration statements filed with the Commission pursuant to Section 5 of the Securities Act. The permutations are numerous and

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[29] The Commission acknowledged the primarily institutional market for ABS in the initial adopting release for Regulation AB. Asset-Backed Securities, 70 Fed. Reg. 1505, 1511 (Jan. 7, 2005) ("The predominant purchasers of asset-backed securities today are institutional investors, including financial institutions, pension funds, insurance companies, mutual funds and money managers.").

wide-ranging; the effects of applying Rule 15c2-11 to each of these types of securities vary and have not been analyzed by the Commission.

2. There Are Many Fixed Income Securities and Few Meaningful Exceptions

Another key difference between the fixed income markets and the equity markets is the sheer number of instruments. An issuer may sell multiple fixed income instruments with different coupons, different maturities, and different call features. A single ABS offering may be comprised of many tranches with different characteristics and be based on different cashflows. Fixed income securities may trade frequently for a short period of time after issuance, but trade only infrequently, "by appointment" after that. The large number of fixed income securities significantly complicates compliance because the requirements of the rule will trigger much more frequently than in the equity markets (*i.e.*, each time a broker-dealer publishes a quotation for a unique fixed income security).[30] The systems and procedures that broker-dealers would have to build to comply with the information review requirements of Rule 15c2-11 with respect to this large number of securities is likely to increase transaction costs and deter the publication of quotations.

Another significant difference between equity markets and fixed income markets is that a vast majority of equity securities that are most likely to trade are listed and traded on a national securities exchange, whereas very few fixed income securities are listed or traded on exchanges. The OTC equity market is a relatively small segment of the overall equity market. The fixed income market, by contrast, is almost exclusively an OTC market. This distinction is critical because Rule 15c2-11 contains a broad exception for the publication of quotations for securities that are listed and traded on a national securities exchange, excepting thousands of equities (both stocks and options) from the scope of the rule.[31] This exception, however, is generally not relevant for fixed income securities, as very few such securities are listed and traded on exchanges. Absence of an available exception for fixed income securities leads to absurd results. For example, as written, the rule would apply to the publication of quotations for highly liquid U.S. government securities, such as the on-the-run 10-year U.S. Treasury note, but not to quotations for volatile equity securities, such as "meme" stocks; the rule would apply to the publication of quotations for bonds issued by Ford Motor Company, but not to the publication of quotations for stock issued by Ford Motor Company. We are very concerned that applying Rule 15c2-11 to fixed income securities would deter dealers from publishing quotations promptly (if at all) for fixed income securities, including those issued by large, investment-grade issuers. We do not believe that the Commission intended these results.

In addition, due to the large number of fixed income securities, many trade infrequently, making other exceptions scarcer for bonds than for stocks. For example, the rule contains a "piggyback" exception that is conditioned on, among other things, no more than four consecutive

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[30] A search on Bloomberg indicates approximately 2.5 million fixed income securities are currently outstanding.
[31] 17 C.F.R. § 240.15c2-11(f)(1) ("Except as provided in paragraph (d)(2) of this section, the provisions of this section shall not apply to: (1) The publication or submission of a quotation for a security that is admitted to trading on a national securities exchange and that is traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published or submitted.").

days without quotations.[32] Because the vast majority of bonds trade infrequently, this consecutive day condition is relatively less likely be to be met.[33] Further, the application of the piggyback exception is very difficult to monitor and efficiently apply, as it would effectively require a broker-dealer to monitor for every potential source of a publication of a quotation – there could be multiple potential sources and not all broker-dealers may have prompt access to them, if at all.

Similarly, Rule 15c2-11 contains an exception for actively traded securities if the ADTV is at least $100,000 during the 60 calendar days preceding the publication of the quotation and the issuer meets certain asset and shareholder equity requirements.[34] Again, because many fixed income securities trade infrequently, this exception may be of little value, even if it could be monitored and complied with, which is not clear to us. Moreover, the Trade Reporting and Compliance Engine ("TRACE") does not disseminate full volume information for trades in real time, and for certain asset classes does not disseminate any information in real time.[35] Accordingly, for some asset classes, rough estimates of trading volumes may be able to be generated, but for others, there is no information available.

In addition, many fixed income platforms that are alternative trading systems ("ATSs") display participant quotations anonymously, using the market participant identifier of the ATSs, and, therefore, are not interdealer quotation systems, as the definition of interdealer quotation system requires that the system disseminates quotations of "identified brokers or dealers."[36] Thus, in the context of these fixed income ATSs, the exception that permits a broker-dealer to rely on a public availability determination by a qualified interdealer quotation system appears to be unavailable. Other fixed income platforms may not be ATSs, or may not be registered as dealers, also making them ineligible to be qualified interdealer quotation systems and making the exception unavailable.[37] The absence of an exception would require each dealer participant separately to comply with the requirements of the rule.[38]

Each time a broker-dealer publishes a quotation for a unique fixed income security, it will need to determine whether an exception may exist. For example, the broker-dealer will need to figure out whether another dealer has been publishing quotations in a manner that could make available the piggyback exception by reviewing quotation activity across multiple platforms or if

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[32] 17 C.F.R. § 240.15c2-11(f)(3).
[33] For example, four consecutive days of quoting makes no sense in the context of the vast number of corporate bonds that do not trade each day. Only 17% of the over 43,000 unique U.S. dollar-denominated investment-grade bonds were traded on any given day in 2020.
[34] 17 C.F.R. § 240.15c2-11(f)(5).
[35] TRACE is the fixed income trade reporting system administered by the Financial Industry Regulatory Authority ("FINRA").
[36] 17 C.F.R. § 240.15c2-11(e)(3), (6).
[37] "[T]he fixed income electronic trading platforms that are regulated as ATSs were those that had live matching trading protocols that brought together the orders of multiple buyers and sellers…. Importantly, request-for-quote (RFQ) platforms, which execute the large majority of electronically-traded corporate bond volumes, generally are excluded from Regulation ATS based on the characteristics of the RFQ trading protocol." Recommendation Regarding Defining 'Electronic Trading' for Regulatory Purposes (Oct. 5, 2020).
[38] The Commission stated that one qualified interdealer quotation system would be subject to the rule. Adopting Release at 68174, n. 565 and accompanying text.

the security was traded frequently enough in the last 60 days such that the ADTV exception is available. If neither these nor any other exception is available, before publishing a quotation, the broker-dealer would need to collect materials, record the materials in its books and records, verify that the materials are current and publicly available, and determine that it has a reasonable basis for believing that the information in such materials is accurate in all material respects and that the source of the materials is reliable. In some instances, the information, while available to investors and prospective investors, may not be publicly available, preventing quotations completely.[39] Further, even if an exception is available on one day, it may not be available the next, so a broker-dealer may need to determine the availability of exceptions repeatedly each day with respect to each fixed income security quoted.

The application of the rule to fixed income securities is expected to increase the cost of quoting by broker-dealers, decreasing transparency and liquidity. Decreased transparency and liquidity will result in wider bid-offer spreads, wider spreads to benchmarks, increased costs of issuing debt, increased costs of price discovery, and less efficient markets. The ongoing electronification of the fixed income markets will be adversely impacted. These outcomes are not in the public interest, do not protect investors, and would instead be detrimental to the public interest and investors. Accordingly, an exemption from Rule 15c2-11 for fixed income securities is warranted.[40]

E. Fixed Income Investors Are Fully Protected by Existing Regulations

Fixed income investors are also protected by best execution requirements[41] and FINRA markup rules.[42] Retail fixed income investors to whom recommendations are made are further protected by Regulation Best Interest, which requires a broker-dealer, when making a recommendation, only to recommend financial products to their customers that are in their customers' best interests and to clearly identify any potential conflicts of interest and financial incentives the broker-dealer may have.[43] Such investors are also afforded the protections of FINRA Rule 2232, which requires disclosure of markups to retail customers on confirmations. These are a carefully tailored, interrelated set of requirements that are effective in ensuring that fixed income investors have the information necessary to make informed investment decisions and are otherwise protected from potential harm. We have seen no evidence in the fixed income markets of the type of issues that exist in the OTC equity markets that led to the Commission's decision to amend Rule 15c2-11. The existing regulatory scheme related to fixed income

[39] Information may be available to investors or prospective investors privately, but not publicly, for example, if the fixed income security is issued by a non-reporting company and offered pursuant to Rule 144A or the security is offered to investors that may receive information subject to a non-disclosure agreement due to the sensitivity of the information relevant to an investment decision.
[40] Rule 15c2-11 also contains an unsolicited customer order exception. The utility of this exception is unclear in the fixed income markets, which tend to involve more principal (or riskless principal) trading than trading on an agency basis. In its cost-benefit analysis of this exception, the Commission referenced costs related to Regulation SHO and FINRA Rule 6432. Regulation SHO and FINRA Rule 6432 both apply only to equity securities, not to fixed income securities, so they are not appropriate reference points for the costs related to compliance with this exception. *See* Adopting Release at 68179, n. 602 and 603 and accompanying text.
[41] See FINRA Rule 5310; FINRA Regulatory Notice 15-46 (Nov. 2015).
[42] See FINRA Rule 2121.02.
[43] Regulation Best Interest, 17 C.F.R. § 240.15l-1.

securities offer the requisite protection to investors without the added measures in Rule 15c2-11, given the nature of the fixed income markets and the limited risks of fraud and manipulation as compared to the OTC equity markets.

Further, the disclosure regime for fixed income securities is a highly calibrated series of requirements and exceptions under the Securities Act and the Exchange Act. That regime reflects a series of policy decisions made by Congress and the Commission over many years about the types of disclosures required for different types of securities, including fixed income securities. The application of Rule 15c2-11 on top of this existing disclosure regime, where the costs may be high and the benefits may be low, such costs and benefits have not been analyzed by the Commission, and the harms at which Rule 15c2-11 is addressed do not appear to exist, is unwarranted.

Fixed income markets drive real-world economic activity and credit availability. For example, the vast majority of U.S. mortgage lending is funded by fixed income securities, as are significant portions of auto lending, credit cards and other consumer products. Fixed income markets are an important source of capital for thousands of companies across the United States and the globe. To the extent that liquidity and activity in fixed income markets is harmed, the costs will be borne not only by broker-dealers and their investor customers, but also by corporate issuers and consumers seeking to obtain credit. Given the harms that the rule would cause to the fixed income markets, its application to those markets is unwarranted.

F. No Problem Exists in the Fixed Income Markets that Necessitates Application of the Rule

There is no demonstrated reason to apply Rule 15c2-11 to fixed income securities. As noted above, the fixed income markets, unlike the OTC equity markets, are primarily institutional markets.[44] The Commission has put forth no evidence of fraud or manipulation in the fixed income market that would be addressed by the application of the rule to that market, and we have identified no such activities. If the Commission wants to apply Rule 15c2-11 to the fixed income markets, it will need to tailor its approach to identify those areas of the fixed income markets where fraud or manipulation are risks and target the rule accordingly. No such tailoring has been undertaken, and the rule, as written, would apply to quotations to all types of investors across the entire fixed income market, other than to quotations for municipal securities, without discrimination.[45] The Adopting Release does not provide any guidance on the application of the rule to the fixed income markets. Accordingly, the application of Rule 15c2-11 to the fixed income markets has definite costs, but no demonstrable benefits.[46] The rule may

[44] Hendrik Bessembinder, Chester Spatt, and Kumar Venkataraman, *A Survey of the Microstructure of Fixed-Income Markets*, 55 J. OF FIN. AND QUANTITATIVE ANALYSIS 1, pg. 6-7 (Feb. 2020), *available at* https://www.sec.gov/spotlight/fixed-income-advisory-committee/survey-of-microstructure-of-fixed-income-market.pdf (Indicating that households make up only a small percentage of ownership for the fixed income securities surveyed outside of municipal securities).
[45] *See supra*, n. 8.
[46] The Commission staff has expressed concerns with the sale of foreign-listed exchange-traded notes to retail investors in the United States. A tailored approach could exclude these types of securities from any exemptive order.

be properly tailored to the retail-focused OTC equity markets, but it misses the mark when applied to fixed income securities.

G. Examples of Situations in Which the Application of the Rule to the Publication of Quotations for Fixed Income Securities Will Have a Negative Effect on Investors

The following examples demonstrate how the rule may harm fixed income markets.

A customer may approach a dealer to sell a bond that has not traded in quite some time. If the dealer buys the bond, providing the customer liquidity, the dealer may not be able to re-offer the bond without complying with the requirements of the rule, dissuading the dealer from providing a bid, or the dealer may lower the bid to incorporate the additional risks and costs. If dealers are dissuaded from bidding, the overall quality of information in markets will decrease, and investors will experience frustration in trying to sell fixed income securities efficiently. We would then expect investors to require higher yields to offset these risks, damaging issuers. As this hypothetical example illustrates, this outcome is negative for market participants, is not in the public interest, and is inconsistent with the protection of investors.

By way of another example, many quotations (or requests for quotations) for fixed income securities may be made available on platforms, such as ATSs. A platform may support broker-dealer quotations for tens of thousands of unique fixed income securities. Participants may seek to publish quotations for any bond at any time. It is not possible for a platform to collect the information and conduct the analysis on each bond each time, which we anticipate would reduce the number of quotations available on the platforms for a broad range of fixed income securities, further reducing transparency and increasing the cost of price discovery. Further, no reference data service currently provides a "Rule 15c2-11 compliant flag" to market participants; although, it is not apparent that the rule would permit such reliance in any event.[47] Market participants are concerned that applying Rule 15c2-11 to electronic platforms will reduce quotation activity on those platforms, decrease transparency, increase costs and interfere with the increasing electronification of the fixed income markets.

Further, applying the rule may have a negative impact on retail investors' ability to access quotations, including, for example, in situations where a retail investor seeks to sell a fixed income security.

III. Exemptive Relief Sought

Based on the above, we respectfully request that, pursuant to Rule 15c2-11(g), the Commission issue an exemptive order excluding quotations published for fixed income securities from the scope of Rule 15c2-11. We request that any security that is a debt security and any non-convertible preferred stock, collectively referred to herein as "fixed income securities" be included within the scope of the exemption. Currently, it is already clear that the application of Rule 15c2-11 to large portions, if not all, of the fixed income market would be unnecessary,

[47] *See* Adopting Release at 68132 ("the Commission does not believe that it would be appropriate to further expand the scope of entities that may comply with the Rule's information review requirement….").

inefficient, and ineffective due to the nature of the securities, the method of offering the securities, the market for the securities, the disclosure regime applicable to the securities, or the nature of the transaction involving the securities. In addition, investors in the fixed income markets are protected by the existing disclosure regimes and other rules related to those markets. Accordingly, the requested exemptions are necessary and appropriate in the public interest, and consistent with the protection of investors.

While we strongly believe that an exemptive order for all fixed income securities is necessary, appropriate, and in the public interest, if the Commission is unwilling to exempt all fixed income securities, we respectfully request that the Commission issue an order: (1) exempting from Rule 15c2-11 the publication of quotations in the following circumstances, and (2) providing dealers with additional time to comply with the amended rule.

A. Exemption for Government Securities

Rule 15c2-11's history demonstrates that government securities should be exempted from the rule. In 1976, the Commission exempted municipal securities from Rule 15c2-11.[48] At that time, the Commission stated:

> Prior to the Securities Acts Amendments of 1975 ("1975 Amendments"), municipal securities were 'exempted securities' under the Act, and section 15(c)(2) of the Act, which by its terms does not apply to 'exempted securities,' and rules promulgated thereunder were inapplicable to brokers and dealers effecting transactions in municipal securities. As a result of changes in the Act effected by the 1975 Amendments… [Rule 15c2-11] would have become applicable to transactions in municipal securities by brokers and dealers. To preserve the status quo pending careful examination of [the rule], the Commission announced the adoption of temporary Rule 23a-1(T) in release No. 11876.[49] (footnotes omitted).

The Commission then adopted a complete exemption from Rule 15c2-11 for the publication of quotations in municipal securities. The Commission stated:

> Generally, the type of information required by the rule is that which would be disclosed in a registration statement filed under the Securities Act of 1933 or in the periodic reports filed under the Securities Exchange Act. Since municipal securities and their issuers are currently exempt from federal registration and reporting requirements, the Senate Committee pointed out . . . that 'Rule 15c2-11 type of information is… generally not available for municipal securities and their issuers.' The Committee then stated that applying Rule 15c2-11 to municipal securities would 'preclude brokers and dealers from submitting quotations on most issues of municipal securities,' a development which 'would have very serious adverse consequences.' The Committee concluded by stating that '[i]t

[48] Exchange Act Rel. No. 34-12468, 41 Fed. Reg. 22820 (June 7, 1976).
[49] *Id.* at 22821.

> expects, therefore, that immediately upon enactment of S. 249, the Commission will exempt municipal securities from Rule 15c2-11.' Accordingly, the Commission has amended Rule 15c2-11 to exempt quotations for municipal securities for the time being.[50] (footnotes omitted).

The exemption for municipal securities has remained in Rule 15c2-11 through the present. The rationale that supported the exemption for municipal securities supports an exemption for government securities.

Rule 15c2-11 was initially implemented in 1971 pursuant to Sections 15(c)(2), 17(a) and 23(a) of the Exchange Act.[51] Section 15(c)(2)(A) prohibits broker-dealers from fraudulently inducing purchases or sales of securities. By its terms, Section 15(c)(2)(A) does not apply to an exempted security or to commercial paper, bankers' acceptances, or commercial bills. The definition of "exempted security" currently includes government securities and municipal securities.[52] Those two classes of securities would not have been covered by Section 15(c)(2) or Rule 15c2-11, except for amendments in 1975 to add what is now Section 15(c)(2)(B) to the Exchange Act and amendments in 1993 to add Section 15(c)(2)(C) to the Exchange Act, which applied Section 15(c)(2) to municipal securities and government securities, respectively.[53] We have identified no discussion of the application of Rule 15c2-11 to government securities as a result of the Government Securities Act Amendments of 1993.

As noted above, the Commission exempted municipal securities from Rule 15c2-11 in 1975. The Commission should take the same step now with respect to government securities for the same reason it took that step in 1975 with respect to municipal securities. The arguments for exempting municipal securities from Rule 15c2-11 apply equally to government securities: government securities are exempt from the registration requirements of the Securities Act and prohibiting broker-dealers from publishing quotations in government securities would be highly disruptive and have very serious adverse consequences. Moreover, because Section 15(c)(2) of the Exchange Act has not been amended to include any other exempted securities or to include commercial paper, bankers' acceptances, or commercial bills, these fixed income products are

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[50] *Id.* at 22822.

[51] Initiation or Resumption of Quotations by a Broker or Dealer Who Lacks Certain Information, 36 Fed. Reg. 18641 (Sept. 18, 1971). The Adopting Release provides as statutory authority Sections 3, 10(b), 15(c), 15(h), 17(a), 23(a), and 36 of the Exchange Act. Adopting Release at 68203.

[52] 15 U.S.C. § 78c(a)(12)(A)(i)-(ii) ("The term 'exempted security'…includes (i) government securities, as defined in paragraph (42) of this subsection: (ii) municipal securities, as defined in paragraph 29 of this subsection.").

[53] Government Securities Act Amendments of 1993; Securities Acts Amendments of 1975. Section 15(c)(2)(E) of the Exchange Act also requires the Commission to consult with the Secretary of the Treasury and each appropriate regulatory agency prior to adopting any rule or regulation under Section 15(c)(2)(C). Section 3(a)(12)(B)(i) of the Exchange Act states that government securities are not exempted securities for purpose of Section 17A of the Exchange Act and Section 3(a)(12)(B)(ii) states that municipal securities are not exempted securities for purposes of both 15(c) and 17A of the Exchange; presumably, then government securities remain exempted securities for purposes of Section 15(c) of the Exchange Act. Accordingly, the application of Rule 15c2-11 to government securities would be accomplished through Section 15(c)(2)(C) of the Exchange Act, which would have required the Commission to consult with the Secretary of the Treasury and each appropriate regulatory agency. We have not seen evidence of any such consultation with respect to the application of Rule 15c2-11 to government securities and so it is not clear that Rule 15c2-11 currently applies to government securities.

not subject to Rule 15c2-11.[54] For purposes of Rule 15c2-11, government securities should be treated like municipal securities and other exempted securities and should not be subject to Rule 15c2-11. Accordingly, we request an exemptive order from Rule 15c2-11 for government securities.

B. Exemption for Securities Addressed by the Federal Securities Law Disclosure Regime

As discussed in Section II.C. above, many fixed income securities are addressed by the existing disclosure regime of the federal securities laws. We request that the publication of quotations for any security issued or traded under any such disclosure regime be exempted from Rule 15c2-11. This exemption would exclude from Rule 15c2-11 quotations in the following types of securities: (1) fixed income securities of an issuer that is a reporting company under the federal securities laws;[55] (2) fixed income securities registered for sale under Section 5 of the Securities Act; (3) fixed income securities of an issuer offered and sold pursuant to Rule 144A under the Securities Act; (4) fixed income securities of an issuer offered and sold pursuant to Regulation D under the Securities Act; (5) fixed income securities of an issuer that has issued any other security that is listed on a national securities exchange; and (6) securities sold offshore pursuant to Regulation S. ABS have their own disclosure requirements and may be offered and sold under various rules. These disclosure regimes have proven effective for fixed income securities, and there is no demonstrated reason to add the requirements of Rule 15c2-11 to the existing disclosure regime for these securities

C. Exemption for Quotations Published to Institutional Investors and Broker-Dealers

Given Rule 15c2-11's clear focus on protecting retail investors, as evidenced by the rulemaking record discussed in Section II.B. above and in SEC statements, quotations published to institutional investors should be exempted from Rule 15c2-11, regardless of the underlying fixed income security.[56] For purposes of this exemption, we would define institutional investor to be consistent with FINRA Rule 4512(c).[57] We would define broker-dealer by reference to the definitions in Sections 3(a)(4) and 3(a)(5) of the Exchange Act. This exemption for the publication of quotations to institutional investors is necessary to maintain the status quo with respect to unregistered, non-exempted securities for which quotations are published in the institutional or interdealer markets. Institutional investors and broker-dealers can adequately

[54] In 1998 and 1999, the Commission proposed to exempt exempted securities from Rule 15c2-11, but those proposals were never adopted and would appear to have been unnecessary for exempted securities, except government securities, which were brought within the ambit of Section 15(c)(2) in 1993. *See* Publication or Submission of Quotations Without Specified Information, 63 Fed. Reg. 9661 (Feb. 25, 1998); *see also* Publication or Submission of Quotations Without Specified Information, 64 Fed. Reg. 11124 (Mar. 8, 1999) ("Reproposing Release").
[55] Included within this request are fixed income securities issued in reliance on Rule 12g3-2(b).
[56] See https://www.sec.gov/news/press-release/2020-212.
[57] FINRA Rule 4512(c) defines an "institutional account" as "(1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million."

assess the merits of these types of securities. The Commission has previously understood that these types of investors do not require the same protections as retail investors under the federal securities laws.[58] An important example of such securities is foreign sovereign debt, initially offered and sold offshore pursuant to Regulation S, that, after the completion of any distribution compliance period, may be offered and sold to investors in the United States pursuant to the exemptions provided by Section 4(a)(3) or 4(a)(4) of the Securities Act from Section 5 of the Securities Act. Moreover, an exemption to publish quotations to institutional investors and broker-dealers would permit a platform to build a compliance program around the status of the participant, rather than based on the status of hundreds of thousands of securities for which dealers may publish quotations.

D. Exemptions for Securities Issued by Banks Including Brokered CDs That Are Securities

Securities issued by banks are subject to an exemption in Section 3(a)(2) of the Securities Act from the registration requirements of Section 5 of the Securities Act. Banks that are subject to regulation by a member of the Federal Financial Institutions Examination Council ("FFIEC")[59] are required to make regular, detailed disclosures about their financial condition, among other things. Every national bank, state member bank, and insured nonmember bank is required by its primary federal regulator to file a Reports of Condition and Income ("Call Report") as of the close of business on the last day of each calendar quarter.[60] Call Reports and Uniform Bank Performance Reports ("UBPRs")[61] for most FDIC-insured institutions are made available to the public on the FFIEC Central Data Repository's Public Data Distribution website.[62] Call Reports provide current information about bank issuers that has been tailored by banking regulators for the institutions they regulate. The Commission has stated that

[58] *See* Resale of Restricted Securities; Changes To Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145, 53 Fed. Reg. 44016-01, 1988 WL 271921 (Nov. 1, 1988) (when proposing the adoption of Rule 144A and the definition of "qualified institutional buyer," the Commission noted that it selected investors that "have extensive experience in the private resale market for restricted securities" and who are "conclusively assumed to be sophisticated and in little need of the protection afforded by the Securities Act's registration provisions."); *see also* Accredited Investor Definition, 85 Fed. Reg. 64234, 64235 (Oct. 9, 2020) (*quoting* Regulation D Revisions; Exemption for Certain Employee Benefit Plans, 52 Fed. Reg. 3015 (Jan. 30, 1987)) ("Historically, the Commission has stated that the accredited investor definition is 'intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or fend for themselves render the protections of the Securities Act's registration process unnecessary.'").
[59] The FFIEC is an interagency body comprising the Federal Reserve Board of Governors, the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau.
[60] *See, e.g.*, 12 U.S.C. § 324 (state member banks); 12 U.S.C. §1817 (state nonmember banks); 12 U.S.C. §161 (national banks); 12 U.S.C. §1464 (savings associations); *see also* FFIEC Forms 031, 041 and 051.
[61] The UBPR is a multi-page financial analysis of a commercial bank or savings bank that files the Consolidated Reports of Condition and Income (Call Report). The UBPR is organized by subject, *e.g.*, earnings, balance sheet, asset quality, liquidity, and capital. Each report contains data for five separate periods of time (quarters) that tie to the quarterly Call Report filed by banks. The UBPR compares the performance of a given bank both against itself over time and against the performance of a group of peer banks. Peer group average and percentile ranking data provide benchmarks to measure bank performance. FFIEC, *Frequently Asked Questions*, https://cdr.ffiec.gov/public/HelpFileContainers/FAQ.aspx#top.
[62] FFIEC Central Data Repository's Public Data Distribution, https://cdr.ffiec.gov/public/ManageFacsimiles.aspx.

"information that is posted on the website of a federal banking regulator, such as https://cdr.ffiec.gov/ and https://www.ffiec.gov/, generally includes the following financial information for companies that is specified in paragraph (b)(5)(i)(L) of the amended rule: The issuer's balance sheet, income statements, and retained earnings statement."[63]

Banks also issue CDs. While generally CDs are not securities, and would not be subject to Rule 15c2-11, there are limited circumstances under which brokered CDs may be securities.[64] CDs are insured by the FDIC up to certain amounts. CDs that are securities are also exempted from the requirements of Section 5 of the Securities Act under Section 3(a)(2) of the Securities Act. Regulations require that institutions need to be well-capitalized to accept deposits without restriction. A bank deemed adequately capitalized may only accept deposits if it has received a waiver by the FDIC, and undercapitalized banks may not accept deposits. This standard for insured depository institutions to accept deposits is aimed at reducing the number of liquidity failures of said institutions.

The application of Rule 15c2-11 to bank-issued fixed income securities and CDs is unnecessary, as banks are regulated, information is available, and in the case of CDs, deposit insurance is available up to a certain amount. Applying Rule 15c2-11 to this market would inhibit quotations and would be highly disruptive. Accordingly, we request an exemption for the publication of quotations for fixed income securities and CDs issued by banks.

E. Extension of Time to Comply for Fixed Income Securities Not Included Within an Exemption

Further, to the extent the Commission does not issue an order exempting all fixed income securities from Rule 15c2-11, we request an extension of time as soon as reasonably practicable to comply with the rule for any fixed income security not covered by an exemptive order, as the infrastructure necessary to comply with the amendments in the fixed income markets does not exist and will require time to implement. Given the vast number of fixed income securities, the very limited utility of the exchange-listed exception, the piggyback exception, and the ADTV exception, the rule will apply to a vast number of fixed income securities. Further, there is no automated way for dealers to comply; all compliance would be manual. We believe that applying the rule to fixed income securities will be highly disruptive and will reduce quotation activity, increasing costs unnecessarily. We, therefore, request an extension of time to permit dealers to establish an automated infrastructure for compliance with the requirements of the rule.

SIFMA and BDA are willing and open to continued discussions with the Commission about the application of Rule 15c2-11 to the fixed income market. Should you have any questions, please contact the undersigned.

[63] Adopting Release at 68143, n. 249.
[64] *See, e.g.*, NASD Notice Members 02-69 (Oct. 2002) (circumstances that may make a brokered CD a security).

Regards,

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The Honorable Elad L. Roisman, Commissioner, SEC
The Honorable Allison Herren Lee, Commissioner, SEC
The Honorable Caroline A. Crenshaw, Commissioner, SEC

Robert Cook, President and CEO, FINRA
Stephanie Dumont, Executive Vice President, Market Regulation and Transparency Services, FINRA

Attachment A

<u>Sample Rule 144A Reporting Covenant</u>

Reports and Other Information

The Indenture provides that so long as any Notes are outstanding, the Company will furnish to the Holders (with a copy to the Trustee):

> (1) (a) all annual and quarterly financial statements substantially in forms that would be required to be contained in a filing with the SEC on Forms 10-K and 10-Q of the Company, if the Company were required to file such forms, plus a "Management's Discussion and Analysis of Financial Condition and Results of Operations," (b) with respect to the annual and quarterly information, a presentation of EBITDA and Adjusted EBITDA of the Company substantially consistent with the presentation thereof in the Existing Notes Offering Memorandum and derived from such financial information, and (c) with respect to the annual financial statements only, a report on the annual financial statements by the Company's independent registered public accounting firm; and
>
> (2) promptly after the occurrence of an event required to be therein reported, such other information containing substantially the same information that would be required to be contained in filings with the SEC on Form 8-K under Items 1.01, 1.02, 1.03, 2.01, 2.05, 2.06, 4.01, 4.02, 5.01 and 5.02(b) and (c) (other than with respect to information otherwise required or contemplated by Item 402 of Regulation S-K promulgated by the SEC) as in effect on the Effective Date if the Company were required to file such reports; provided, however, that no such current report will be required to include as an exhibit, or to include a summary of the terms of, any employment or compensatory arrangement agreement, plan or understanding between the Company (or any of its Subsidiaries) and any director, manager or executive officer of the Company (or any of its Subsidiaries);

provided, *however*, that (i) in no event shall such reports be required to comply with Rule 3-10 of Regulation S-X promulgated by the SEC or contain separate financial statements for the Company, the Guarantors or other Subsidiaries the shares of which are pledged to secure the Notes or any Guarantee that would be required under (a) Rule 3-09 of Regulation S-X, (b) Rule 3-10 of Regulation S-X or (c) Rule 3-16 of Regulation S-X, respectively, promulgated by the SEC, (ii) in no event shall such reports be required to comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-GAAP financial measures contained therein, (iii) no such reports referenced under clause (2) above shall be required to be furnished if the Company determines in its good faith judgment that such event is not material to the Holders or the business, assets, operations or financial position of the Company and the Restricted Subsidiaries, taken as a whole, (iv) in no event shall such reports be required to include any information that is not otherwise similar to information included in the Existing Notes Offering Memorandum, other than with respect to reports provided under clause (2) above and (v) in no event shall reports referenced in clause (2) above be required to include as an exhibit copies of any agreements, financial statements or other items that would be required to be filed as exhibits to a current report on Form 8-K except for (x) agreements evidencing material Indebtedness and (y) historical and *pro forma* financial statements to the extent reasonable available and, in any case with respect to *pro forma* financial statements, to include only *pro forma* revenues, Consolidated EBITDA and Capital Expenditures in lieu thereof.

All such annual reports shall be furnished within 120 days after the end of the fiscal year to which they relate, and all such quarterly reports shall be furnished within 60 days after the end of the fiscal quarter to which they relate.

At any time that any of the Company's Subsidiaries are Unrestricted Subsidiaries and if any such Unrestricted Subsidiary or group of Unrestricted Subsidiaries, if taken together as one Subsidiary, would constitute a Significant Subsidiary of the Company, then the quarterly and annual financial information required by the preceding paragraph will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" or other comparable section, of the financial condition and results of operations of the Company and Restricted Subsidiaries separate from the financial condition and results of operations of such Unrestricted Subsidiaries of the Company.

The Company will make available such information and such reports (as well as the details regarding the conference call described below) to any Holder and, upon request, to any beneficial owner of the Notes, securities analysts providing analysis of investment in the Notes and market makers, in each case by posting such information on its website, on Intralinks or any comparable password-protected online data system which will require a confidentiality acknowledgment, and will make such information readily available to any Holder, beneficial owners of Notes, any prospective investor in the Notes, any securities analyst (to the extent providing analysis of investment in the Notes) or any market maker in the Notes who agrees to treat such information as confidential or accesses such information on Intralinks or any comparable password-protected online data system which will require a confidentiality acknowledgment; *provided* that the Company shall post such information thereon and make readily available any password or other login information to any such Holder, beneficial owner of Notes, prospective investor, securities analyst or market maker; *provided, further, however,* the Company may deny access to any competitively-sensitive information otherwise to be provided pursuant to this paragraph to any such Holder, prospective investor, security analyst or market maker that is a competitor of the Company and its Subsidiaries to the extent that the Company determines in good faith that the provision of such information to such Person would be competitively harmful to the Company and its Subsidiaries; and *provided, still further,* that such Holders, prospective investors, security analysts or market makers shall agree to (i) treat all such reports (and the information contained therein) and information as confidential, (ii) not use such reports and the information contained therein for any purpose other than their investment or potential investment in the Notes (but shall be authorized to trade the Company's securities) and (iii) not publicly disclose any such reports (and the information contained therein). The Company will hold a quarterly conference call for all Holders and securities analysts (to the extent providing analysis of investment in the Notes) to discuss such financial information (including a customary Q&A session) no later than ten (10) Business Days after distribution of such financial information.

In addition, to the extent not satisfied by the foregoing, the Company shall furnish to prospective investors, upon their request, any information required to be delivered pursuant to Rule

144A(d)(4) under the Securities Act so long as the Notes are not freely transferable under the Securities Act.

The Indenture permits the Company to satisfy its obligations in this “Reports and Other Information” covenant with respect to financial information relating to the Company by furnishing financial information relating to any Parent Entity of the Company instead of the information, which may be unaudited, that explains in reasonable detail the differences between the information Company; provided that to the extent financial information related to such Parent Entity is provided, such information is accompanied by consolidating information, which may be unaudited, that explains in reasonable detail the differences between the information of such Parent Entity, on the one hand, and the information relating to the Company and its Subsidiaries on a stand-alone basis, on the other hand.

The Company will be deemed to have furnished the reports referred to clauses (1) and (2) of the first paragraph of this covenant if the Company or any Parent Entity of the Company has filed reports containing such information with the SEC.

To the extent any information is not provided within the time periods specified in this section “—Reports and Other Information” and such information is subsequently provided, the Company will be deemed to have satisfied its obligations with respect thereto at such time and any Default or Event of Default with respect thereto shall be deemed to have been cured.

Notwithstanding the foregoing, if at any time the Company or any Parent Entity of the Company has made a good faith determination to file a registration statement with the SEC with respect to an initial public offering of such entity's Capital Stock, the Company will not be required to disclose any information or take any actions that, in the good faith view of the Company, would violate applicable securities laws or the SEC's “gun jumping” rules.

Delivery of such reports, information and documents to the Trustee shall be for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants under the Indenture or the Notes (as to which the Trustee shall have no duty to monitor and shall be entitled to rely exclusively on Officer's Certificates). The Trustee shall not be obligated to monitor or confirm, on a continuing basis or otherwise, our compliance with the covenants or with respect to any reports or other documents filed with the SEC or participate in any conference calls.